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Paper 28  
Filed: February 9, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Merck Patent Gmbh,  
Junior Party  
(Application 10/239,566,  
Inventors: Friedrich Rippmann and Klaus Ducker),  
v.  
Lexicon Genetics Inc.,  
Senior Party  
(Patent 7,229,790  
Inventors: Carl Johan Friddle and Brenda Gerhardt, and Yi Hu).

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Patent Interference 105,594 (RES)  
Technology Center 1600

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Before: RICHARD E. SCHAFER, JAMESON LEE, and  
MICHAEL P. TIERNEY, Administrative Patent Judges.

SCHAFER, Administrative Patent Judge

Judgment - Request for Adverse - Bd.R. 127(b)

- 1 Merck has filed a notice of abandonment of the contest (Paper 27).
- 2 An abandonment of the contest is construed as a request for adverse
- 3 judgment. 37 CFR § 41.127(b)(4). Accordingly, it is

1           ORDERED that judgment on priority as to the subject matter of  
2 Count 1 (Paper 1, p. 4) is awarded against Merck;

3           FURTHER ORDERED that Claims 1-9 and 11 of Merck  
4 Application 10/239,566 (corresponding to Count 1) are finally refused (35  
5 U.S.C. § 135(a));

6           FURTHER ORDERED that a copy of this judgment be made of  
7 record in the files of Application 10/239,566, and Patent 7,229,790; and

8           FURTHER ORDERED that if there is any settlement agreement or  
9 related documents which have not been filed, attention is directed to  
10 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/ Richard E. Schafer/ )  
RICHARD E. SCHAFER )  
Administrative Patent Judge )

/ Jameson Lee / ) BOARD OF PATENT  
JAMESON LEE ) APPEALS AND  
Administrative Patent Judge ) INTERFERENCES

/ Michael P. Tierney/ )  
MICHAEL P. TIERNEY )  
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